IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3991 of 2004
With
CIVIL APPLICATION No. 4058 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VAISHALI A DESAI - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR IS SUPEHIA FOR MS KHYATI P HATHI for Petitioner(s) : 1,
MR SIRAJ GORI, AGP for Respondent(s)

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 01/09/2006

ORAL JUDGMENT

1. Before this Court only two grievances were raised on behalf of the petitioner. Firstly, it was

contended that the petitioner received the gratuity amount payable on the basis of service rendered by her deceased husband belatedly. The same should, therefore, carry interest. The second claim of the petitioner is regarding enhanced amount of group insurance, which according to the petitioner was short-paid.

2. Briefly stated, the facts of the case are that the petitioner's husband was employed by the State Government and was discharging his duties under the Sports Authority of Gujarat. While in service, he expired on 7th February 1999. The petitioner was entitled to receive family pension and gratuity besides other death-cum-retirement benefits. Though provisional pension was fixed and paid to the family shortly after the death of the husband of the petitioner, gratuity was actually released on 18th September, 2002. There is thus considerable delay in releasing the gratuity amount in favour of the petitioner.

3. Second limb of the claim of the petitioner is

that the husband of the petitioner was, as per his correct pay fixation, required to be covered for higher group insurance benefits. Pay fixation of the husband of the petitioner was not carried out while he was in active service. On account of the incorrect pay fixation, the Government continued to deduct only Rs.100 per month towards group insurance benefits. Subsequently, after the death of the husband of the petitioner, pay fixation was granted. According to this pay fixation, the petitioner would have been entitled to receive two lacs rupees of group insurance coverage. For the said purpose, from the salary of the husband of the petitioner, the Government had to deduct Rs.200/- per month towards group insurance premium whereas in effect only Rs.100/- was being deducted while the husband of the petitioner was in service.

4. It is not in dispute that the pensionary benefits as well as gratuity have been fully paid. It is also not in dispute that the petitioner had received Rs.1,23,160/- by way of group insurance benefits from the respondents.

5. The Government has sought to resist the petition on the following grounds.

5.1 It is contended that the service book of the husband of the petitioner was lost. The same had to be reconstructed and with best efforts the same was done as early as possible and thereupon gratuity of the petitioner was ascertained and paid. It is contended that provisional pension was released soon after the death of the husband of the petitioner.

5.2 With respect to the insurance claim, it was contended that the Government deducted only Rs.100 per month from the salary of the husband of the petitioner as per his pay-scale granted to him at the relevant time and the petitioner now cannot claim higher insurance benefits.

6. I have heard the learned advocates appearing for the parties. In the reply statement, the Government has not come out with the case that the husband of the petitioner was responsible for the loss of the

service book. It may be that the respondents had justifiable cause or reason for not being able to release the gratuity in favour of the petitioner soon after the death of her husband. That by itself, however, cannot negate the claim of the petitioner for reasonable interest. Interest in such a case need not be penal, it can always be compensatory. It is not in dispute that the petitioner received the amount belatedly. Since it was not on account of the fault of the husband of the petitioner or the petitioner that the amount could be released late, delayed payment of gratuity should carry reasonable interest.

7. With respect to the insurance claim also I find that the pay fixation of the husband of the petitioner could not be done at the relevant time for no fault of his. If timely action was taken and pay fixation properly made, the respondents would have covered the petitioner under the higher group insurance coverage. The petitioner had represented to the respondents that the deficit of premium be recovered from the difference of salary due to her.

The respondents had, in fact, while releasing the difference of salary of the deceased in favour of the petitioner deducted an amount of Rs.3100/- for higher group insurance coverage. This deduction was made at the rate of Rs.100/- per month for 31 months. Thus by their conduct, the respondents agreed to cover the husband of the petitioner under higher group insurance scheme benefits. It would now not be open to the respondents to turn around and suggest that the petitioner cannot get higher coverage of group insurance. The issue can be looked at a slightly different angle. If timely action was taken for granting correct pay-scale to the husband of the petitioner and he was placed under correct pay-scale, automatically, his claim for higher group insurance benefits would have been crystallized. In fact, the Government also understood the issue in proper perspective. Perhaps, on account of that only while releasing the amount of difference in salary and paying to the same to the petitioner, an amount of Rs.3100 was deducted towards difference in group insurance premium. The deeming fiction therefore would arise that the petitioner would be deemed to

have been covered for higher benefits of group insurance from the outset.

8. It may be noted that it is brought to the notice of the Court that group insurance is being paid by the Government and the Government does not rely on any insurance company for such coverage for its employees. Considering all these aspects of the matter, the petition is disposed of with following directions:

(1) Delayed payment of gratuity to the petitioner to the extent of delay shall carry simple interest at the rate of 6 per cent after three months from the date of death of the husband of the petitioner till actual payment.

(2) Respondents shall cover the petitioner under higher group insurance scheme benefits as if from the salary of the husband of the petitioner premium of Rs.200/- per month was being paid while he was in service and at the time of his death and accordingly whatever higher benefits are payable shall be

released in favour of the petitioner.

9. With the above directions, the petition is disposed of. The above exercise shall be completed within a period of three months from the date of receipt of a copy of this order. Rule is made absolute accordingly with no order as to costs.

10. In view of the order passed in the main matter, Civil Application is disposed of without any further order.

(Akil Kureshi, J.)

(vjn)